

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE ARC AIRBAG INFLATORS
PRODUCT LIABILITY
LITIGATION

MDL No. 3051
Case No. 1:22-md-3051-ELR

Hon. Eleanor L. Ross

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' NOTICE OF
NHTSA SUPPLEMENTAL
INITIAL DECISION**

Defendants write in response to Plaintiffs' Notice of NHTSA's Supplemental Initial Decision (Dkt. 267).

The Supplemental Initial Decision is irrelevant to any issues presented by the pending motions to dismiss. To begin, the Supplemental Initial Decision is not final. NHTSA is providing an additional 30-day comment period for interested parties to present information, views, and arguments, and NHTSA may revisit or revise its decision before issuing any final determination. Any final determination would then be subject to judicial review.

In any event, the Supplemental Initial Decision (or any subsequent final determination by NHTSA) has no bearing on the pending motions to dismiss, which must be decided based on "the four corners of the complaint" and its exhibits. *Turner v. Williams*, 65 F.4th 564, 583 n.27 (11th Cir. 2023). The Supplemental Initial Decision is neither part of the Amended Complaint nor an exhibit to it, and it falls

into none of the other categories of documents that may be considered on a motion to dismiss.

Nor does the Supplemental Initial Decision, as Plaintiffs claim, reject points that “parallel the arguments Defendants made in their pending motions to dismiss in this case.” Dkt. 267 at 2. Defendants’ pending motions address the sufficiency of the Amended Complaint, raising legal issues about claims for money damages that are entirely distinct from the issues NHTSA is considering. NHTSA’s non-final Supplemental Initial Decision has no bearing on the questions the Court must decide at this stage, including those related to standing, jurisdiction, timeliness, and the sufficiency of Plaintiffs’ claims and factual allegations (or lack thereof) under the relevant pleading standards and state law.

Dated: August 19, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared with Times New Roman 14-point font, one of the font and point selections approved by Local Rule 5.1.

/s/ Eric S. Mattson

CERTIFICATE OF SERVICE

I certify that on August 19, 2024, a copy of the foregoing was served electronically through the Court's electronic filing system on all parties appearing on the Court's ECF service list.

/s/ Eric S. Mattson